

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION NO 648 OF 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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PATEL DHULABHAI AMICHAND

VERSUS

SHEKH BACHUMINYA BAPUMINYA  
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Appearance:

MR SM SHAH for the Petitioner

MR SUNIL K. SHAH for the Respondent  
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CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 30/12/1999

C A V JUDGMENT

#. Under the impugned order dated 28/3/95 of the learned

Trial Court granted application filed by the plaintiff-respondent for amendment of the plaint. The suit was filed on 2/11/86 for declaration of the ownership. The amendment has been prayed for in the plaint for removal of the construction alleged to have been made by the defendant on the land admeasuring 48 1/2' x 6' of the survey No.278.

#. Shri Shah, learned counsel for the petitioner-defendant contended that the construction was made by the defendant much earlier to the filing of the suit. Even from panchnamas which were got prepared by the plaintiff i.e. on 4/12/1986 and 19/12/86, the construction was reported to be raised before eight years and the plaintiff has not chosen to pray for this relief in the plaint and this amendment is barred by the provisions of Order 2 Rule 2 of Code of Civil Procedure.

#. It has next been contended that the evidence submitted by both the parties has been completed in the suit and the court has fixed the matter for final hearing and at this point of time this amendment has been applied for and it should have been rejected only on the ground of delay and laches. Shri Sunil Shah supported the order of the learned Trial Court.

#. Having given my thoughtful consideration to the submissions made by the learned counsel for the parties, I am satisfied that no interference is called for in the order of the trial court impugned in this Civil Revision Application. It is the case of the plaintiff-respondent that the construction has been raised by the defendant-petitioner after filing of the suit. So this point has to be decided by the court when this construction has been put. In case this construction is put by the defendant-petitioner after filing of the suit certainly it is objectionable and in the same suit the learned Trial Court has all the power to order for its removal. Delay is there in filing of the application for amendment of the plaint but merely on the delay it is not the law that the application is to be rejected.

#. The learned Trial Court has taken into consideration this aspect of the matter and for this delay it has compensated to the defendant-petitioner as the plaintiff-respondent has been directed to pay Rs.350/- as the costs of this application to the defendant-petitioner. It is a pure question of fact whether the construction has been put before or after the filing of the suit and for which the parties are to prove their respective cases. The defendant-petitioner has

sufficient opportunity to make out his case in his written statement to the amended plaint as to that the claim as raised by the plaintiff-respondent is not acceptable. Whatever the objections the defendant-petitioner has, he can raise in his written statement to the amended plaint and the court will decide the matter on merits. By grant of the amendment in the plaint the defendant-petitioner is not estopped from raising all of his defences in the written statement. The learned Trial Court has not committed any material illegality in exercise of its jurisdiction in passing of the impugned order. The learned Trial court has rightly said that the Order 6 Rule 17 of the Code of Civil Procedure empowers the court to permit the amendment of the pleadings on the request of the parties at any stage of the suit. The amendments in the pleadings are to be liberally granted more so when the same are necessary for the purpose of deciding the controversy, which has been raised in the suit finally. Looking to the nature of the amendment prayed for this prayer is necessarily to be gone into and decided to settle the dispute finally. In case the impugned order is allowed to stand it will not occasion a failure of justice or will cause any irreparable injury to the defendant-petitioner. As said earlier and it is stated at the cost of repetition that on grant of the amendment in plaint all the defences which have been taken in reply to the application of the plaintiff-respondent are open to the defendant-petitioner and if the same are being taken the court has to decide the same. The amendment in the plaint has only been permitted to be carried out by the plaintiff-respondent and not where his claim has been granted.

In the result, this Civil Revision Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. It is the suit of the year 1986 and the learned Trial Court is directed to decide the same finally within a period of 4 months from the date of the receipt of the writ of this order and the compliance of the same be reported to the court.

(S.K.Keshote, J.)

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